

CW (m) 432

By: Edwards

S.J.R. No. 53

~~SENATE~~
A JOINT RESOLUTION

1 proposing a constitutional amendment to allow the legislature to
2 limit the authority of a governor to fill vacancies in state and
3 district offices if the governor is not reelected.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article IV, Section 12, of the Texas Constitution
6 is amended to read as follows:

7 Sec. 12. (a) All vacancies in State or district offices,
8 except members of the Legislature, shall be filled unless otherwise
9 provided by law[7] by appointment of the Governor, which
10 appointment, if made during its session, shall be with the advice
11 and consent of two-thirds of the Senate present. If made during
12 the recess of the Senate, the said appointee, or some other person
13 to fill such vacancy, shall be nominated to the Senate during the
14 first ten days of its session. If rejected, said office shall
15 immediately become vacant, and the Governor shall, without delay,
16 make further nominations, until a confirmation takes place. But
17 should there be no confirmation during the session of the Senate,
18 the Governor shall not thereafter appoint any person to fill such
19 vacancy who has been rejected by the Senate; but may appoint some
20 other person to fill the vacancy until the next session of the
21 Senate or until the regular election to said office, should it
22 sooner occur. Appointments to vacancies in offices elective by the
23 people shall only continue until the next [~~first~~] general election
24 [~~thereafter~~].

4/9/87 5/21/87
5/29/87

S. J. R. No. 53

1 (b) The Legislature by general law may limit the term to be
2 served by a person appointed by the Governor to fill a vacancy in a
3 state or district office to a period that ends before the vacant
4 term otherwise expires or, for an elective office, before the next
5 election at which the vacancy is to be filled, if the appointment
6 is made on or after November 1 preceding the general election for
7 the succeeding term of the office of Governor and the Governor is
8 not elected at that election to the succeeding term. For purposes
9 of this subsection, the expiration of a term of office or the
10 creation of a new office constitutes a vacancy.

11 SECTION 2. This proposed constitutional amendment shall be
12 submitted to the voters at an election to be held November 3, 1987.
13 The ballot shall be printed to provide for voting for or against
14 the proposition: "The constitutional amendment to allow the
15 legislature to limit the authority of a governor to fill vacancies
16 in state and district offices during the end of the governor's term
17 if the governor is not reelected."

S.J.R. No. 53

By: Edwards
(In the Senate - Filed April 1, 1987; April 1, 1987, read first time and referred to Committee on State Affairs; April 9, 1987, reported favorably by the following vote: Yeas 9, Nays 0; April 9, 1987, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	PNV	Absent
Farabee	x			
Blake	x			
Barrientos	x			
Caperton				x
Edwards	x			
Harris	x			
Henderson				x
Leedom	x			
Lyon	x			
McFarland	x			
Parmer	x			
Sarpalius				x
Washington				x

SENATE JOINT RESOLUTION

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(b) The Legislature by general law may limit the term to be served by a person appointed by the Governor to fill a vacancy in a state or district office to a period that ends before the vacant term otherwise expires or, for an elective office, before the next election at which the vacancy is to be filled, if the appointment is made on or after November 1 preceding the general election for the succeeding term of the office of Governor and the Governor is not elected at that election to the succeeding term. For purposes of this subsection, the expiration of a term of office or the creation of a new office constitutes a vacancy.

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* * * * *

Austin, Texas
April 9, 1987

Hon. William P. Hobby
President of the Senate

Sir:

We, your Committee on State Affairs to which was referred S.J.R. No. 53, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be printed.

Farabee, Chairman

SENATE FAVORABLE COMMITTEE REPORT

Lt. Governor William P. Hobby
President of the Senate

4/9/87
(date)/(time)

Sir:

We, your Committee on STATE AFFAIRS to which was referred
STR 53 by Edwards have on 4/8, 1987, had the same
(measure) (sponsor) (hearing date)

under consideration and I am instructed to report it back with the recommendation (s) that it

☒ do pass and be printed

☐ do pass and be ordered not printed

☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☐ yes ☐ no

A revised fiscal note was requested. ☐ yes ☐ no

An actuarial analysis was requested. ☐ yes ☐ no

Considered by subcommittee. ☐ yes ☐ no

Senate Sponsor of House Measure _____

The measure was reported from Committee by the following vote:

	YEA	NAY	PNV	ABSENT
Farabee, Chairman	<input checked="" type="checkbox"/>			
Blake, Vice Chairman	<input checked="" type="checkbox"/>			
Barrientos	<input checked="" type="checkbox"/>			
Caperton				<input checked="" type="checkbox"/>
Edwards	<input checked="" type="checkbox"/>			
Harris	<input checked="" type="checkbox"/>			
Henderson				<input checked="" type="checkbox"/>
Leedom	<input checked="" type="checkbox"/>			
Lyon	<input checked="" type="checkbox"/>			
McFarland	<input checked="" type="checkbox"/>			
Parmer	<input checked="" type="checkbox"/>			
Sarpalius				<input checked="" type="checkbox"/>
Washington				<input checked="" type="checkbox"/>
TOTAL VOTES	9			4

Shanna Igo
COMMITTEE CLERK

Tom Am
CHAIRMAN

May 21 1987
Patricia J. Law
Legislative Clerk

I certify that the attached is a true and correct
copy of SJR 53, which was
received from the Senate on MAY 21 1987 and
referred to the Committee on State Affairs
Robert M. Marney
Chief Clerk of the House

By: Edwards
(Glossbrenner)

S.J.R. No. 53

SENATE JOINT RESOLUTION

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 7, 1987

TO: Honorable Ray Farabee, Chairman In Re: Senate Joint Resolution No. 53
Committee on State Affairs By: Edwards
Senate Chamber
Austin, Texas

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Joint Resolution No. 53 (proposing a constitutional amendment to allow the Legislature to limit the authority of a governor to fill vacancies in state and district offices if the governor is not reelected) this office has determined the following:

The resolution proposes a constitutional amendment which, if adopted, would limit the authority of a governor to fill vacancies in state and district offices if the governor is not reelected. The proposed amendment would be submitted to the voters on November 3, 1987.

The cost of publication of the resolution to the State is estimated to be \$45,000.

No additional fiscal implication to the State or units of local government is anticipated.

Source: Secretary of State
LBB Staff: JO, HES, JWH, LV

HOUSE COMMITTEE REPORT

1937 MAY 27 AM 12:51
U.S. HOUSE OF REPRESENTATIVES

1st Printing

By: Edwards
(Glossbrenner)

S.J.R. No. 53

SENATE JOINT RESOLUTION

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COMMITTEE REPORT

The Honorable Gib Lewis
Speaker of the House of Representatives

5/25/87
(date)

Sir:

We, your COMMITTEE ON STATE AFFAIRS,

to whom was referred STZ 53 have had the same under consideration and beg to report
(measure)

back with the recommendation that it

☒ do pass, without amendment.

☐ do pass, with amendment(s).

☐ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. ☐ yes ☒ no

An actuarial analysis was requested. ☐ yes ☒ no

An author's fiscal statement was requested. ☐ yes ☒ no

~~The Committee recommends that this measure be placed on the (Local) or (Consent) Calendar.~~

This measure ☐ proposes new law. ☒ amends existing law.

House Sponsor of Senate Measure

GROSSBRENNER

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Laney, Ch.	<input checked="" type="checkbox"/>			
Hill, P., V.C.	<input checked="" type="checkbox"/>			
Tallas, C.B.O.	<input checked="" type="checkbox"/>			
Cain				<input checked="" type="checkbox"/>
Danburg	<input checked="" type="checkbox"/>			
Gavin	<input checked="" type="checkbox"/>			
Gibson				<input checked="" type="checkbox"/>
Guerrero	<input checked="" type="checkbox"/>			
Haley				<input checked="" type="checkbox"/>
Leonard	<input checked="" type="checkbox"/>			
Perez				<input checked="" type="checkbox"/>
Riley			<input checked="" type="checkbox"/>	
Saunders				<input checked="" type="checkbox"/>

Total

7

aye

0

nay

1

present, not voting

5

absent

CHAIRMAN

COMMITTEE COORDINATOR

By: Edwards (Glossbrenner)

BILL ANALYSIS

Background Information:

Prior to 1983, when a vacancy occurred after a gubernatorial election and before the new governor took office, the "lame duck" governor could appoint persons to fill the vacancies. The 68th Legislature passed S.B. 194, adding Article 19a, V.T.C.S., to respond to problems arising from such "midnight appointments." Some potential problems and perceived ambiguities in the current law have been raised.

Section 1 can arguably apply to both mid-term and end-of-term vacancies or to end-of-term vacancies only. The latter interpretation would allow a lame duck governor to fill all mid-term vacancies for the remaining full term. Section 2 prohibits the governor from filling certain vacancies without another means of filling the vacancy. This prohibition may exceed the legislature's powers granted by Article IV, Section 12, Texas Constitution, providing for the governor to fill all state and district office vacancies unless otherwise provided by law, although there is no current question of the validity of this Section.

There is perceived ambiguity in the reference to the period prescribed by Section 2(a). This Section refers to the "period" from November 1 until the new governor takes office, but also refers to vacancies occurring "before November 1." Arguably, Section 3(a) may be constitutionally invalid under three different theories; however, there is no current controversy over the validity of this Section.

Purpose:

This bill proposes a constitutional amendment to authorize the legislature to limit the governor's power to fill vacancies if the governor is not re-elected. S.B. 183 amends current law to clarify the limits on this power.

Section by Section Analysis:

SECTION 1: Adds Subsection (b) to Article IV, Section 12, Texas Constitution, to authorize the legislature to limit the term to be served by a gubernatorial appointee filling a vacancy in a state or district office to a period ending before the regular expiration of the term or, in the case of an elective office, before the next election, provided that the appointment is made on or after November 1 prior to the election in which the governor is not reelected.

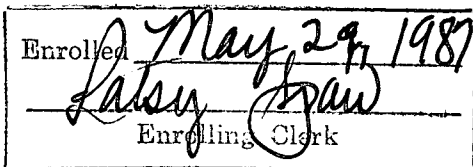
SECTION 2: Requires the proposed amendment be submitted to the voters on November 3, 1987, and prescribes the form of the proposition.

Rulemaking Authority

It is the opinion of the Committee that this bill delegates no rulemaking authority to any state agency, officer, department, or institution.

Summary of Committee Action

S.J.R. 53 was considered in a formal meeting on 25 May 1987. The motion to report the bill favorably without amendment carried with a vote of 7 Ayes, 0 Nays, 1 PNV, and 5 Absent.



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S.J.R. No. 53

President of the Senate

Speaker of the House

I hereby certify that S.J.R. No. 53 was adopted by the Senate on May 21, 1987, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.J.R. No. 53 was adopted by the House on May 28, 1987, by the following vote: Yeas 113, Nays 28, one present not voting.

Chief Clerk of the House

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 7, 1987

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FROM: Jim Oliver, Director

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Source: Secretary of State
LBB Staff: JO, HES, JWH, LV

S.J.R. No. 53

President of the Senate

Speaker of the House

I hereby certify that S.J.R. No. 53 (1) was adopted by the
Senate on May 21 (2), 1987, by the following vote:
Yeas 30 (3), Nays 0 (4).

Secretary of the Senate

I hereby certify that S.J.R. No. 53 (1) was adopted by the
House on May 28 (5), 1987, by the following vote:
Yeas 113 (6), Nays 28 (7), one present not voting.

Chief Clerk of the House

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____,
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by: _____

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommended to Conference Committee

_____ Conferees discharged

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

1987 MAY 27 AM 12: 51

HOUSE OF REPRESENTATIVES

75

85